IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6175 OF 2006

Shri Ganpati Atmaram Fulaware since deceased by legal heirs;

1a. Prabhavati Ganpat Fulware and Ors...Petitioners

Vs.

1. Smt.Kusum Subhash Pawar and Ors. ..Respondents

Mr.S.S.Redekar and Mr.M.A.Dudhane for the petitioners

CORAM : A.P.DESHPANDE, J

DATED : 27TH NOVEMBER, 2006

P.C.:

1. The present petitioner is a landlord / original defendant no.1. It is the case of the petitioner that the defendant no.2 / tenant had surrendered vacant and peaceful possession of the suit premises to the petitioners as he was unable to pay Rs.25,000/-, being his share in repairs of the building. For the first time, before the appellate court, the petitioners took out a notice to allow him to produce a letter purported to have been written by the defendant no.2 dt.14.8.88 by

way of an additional evidence. The appellate court has rejected the same on two grounds. Firstly, that neither in the written statement there is any mention made in regard to the defendant no.2 having written a letter to the father of the petitioner dt.14.8.88 so also there is no mention in that regard in the evidence of the petitioner and secondly, that the petitioner cannot be permitted to lead additional evidence as his case is not covered by Order 41 Rule 27 of the Civil Procedure Code. By holding that the petitioner cannot be permitted to lead additional evidence by way of production of document, in regard to which there is no reference made till the notice came to be taken out, the application is rejected.

2. Perused the order. The appellate court has taken a possible view of the matter which does not call for interference in exercise of writ jurisdiction. In the result, writ petition is summarily rejected.

(SHRI A.P.DESHPANDE, J)